

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 97-0568 RO

Sales Tax

Responsible Officer Liability

For Tax Period: 7/31/92 Through 10/31/96

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Sales Tax – Responsible Officer Liability

Authority: IC 6-2.5-9-3; IC 6-8.1-5-1

Taxpayer protests the imposition of responsible officer liability for sales taxes not paid by Company R.

STATEMENT OF FACTS

Taxpayer was the sole officer on record of Company R during the assessment period. The Department made sales tax assessments against the taxpayer. The assessments were based on returns which were submitted, by Company R, to the Department without the accompanying remittances. Taxpayer protested these assessments. Additional relevant facts will be provided below, as necessary.

I. Sales Tax – Responsible Officer Liability

DISCUSSION

Indiana Code section 6-2.5-9-3 states in part:

An individual who:

- (1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and
 - (2) has a duty to remit state gross retail or use tax to the department;
- holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

Pursuant to Indiana Code section 6-8.1-5-1(b), “The notice of proposed assessment is prima facie evidence that the department’s claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.”

The Department assessed the taxpayer for sales taxes not remitted to the Department by Company R. The assessments were made because the taxpayer was the only officer, agent or incorporator listed on Company R’s Articles of Incorporation.

Taxpayer protested the assessments and claimed Company R owed the sales tax and not the taxpayer, personally. Taxpayer has provided the Department with no evidence that he was not an individual responsible for the tax per IC 6-2.5-9-3.

FINDING

Taxpayer’s protest is denied. Taxpayer has failed to prove he was not a responsible officer for Company R’s sales tax assessments.